

## NEW APPLICATION

## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman  
ANDY TOBIN  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON

In the matter of:

THEODORE W. FOWLER and SHANA C.  
FOWLER, husband and wife,

WHISPERING CREEK INVESTMENTS  
LLC, an Arizona limited liability company,

Respondents.

DOCKET NO. S-21076A-19-0100

NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, ORDER FOR  
RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES, AND  
ORDER FOR OTHER AFFIRMATIVE  
ACTION

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents Theodore W. Fowler and Whispering Creek Investments LLC have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Theodore W. Fowler is the person controlling Whispering Creek Investments LLC within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Whispering Creek Investments LLC for its violations of the antifraud provisions of the Securities Act.

**I.****JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

**II.****RESPONDENTS**

2. Whispering Creek Investments LLC ("WCI") is a manager-managed limited liability company that was organized under the laws of the state of Arizona in January of 2012. WCI has not been registered with the Commission as a securities salesman or dealer.

3. At all times relevant, Theodore W. Fowler ("Fowler") has been married to Shana C. Fowler, and both are residents of Arizona. Fowler is the sole manager and statutory agent for WCI. Fowler has not been registered with the Commission as a securities salesman or dealer.

4. From February 21, 2014, through May 31, 2017, Fowler was licensed in the state of Arizona as an insurance producer. Since May 3, 2017, Fowler has been licensed in the state of Arizona as a real estate salesperson.

5. Shana C. Fowler was at all relevant times the spouse of Fowler and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

6. At all times relevant, Fowler has been acting for his own benefit and for the benefit or in furtherance of Fowler's and Respondent Spouse's marital community.

7. WCI and Fowler may be referred to collectively as "Respondents."

**III.****FACTS**

8. On July 2, 2010, Fowler and Respondent Spouse filed for protection under Chapter-7 of the U.S. Bankruptcy Code, in Arizona. Fowler and Respondent Spouse's schedules listed \$628,448.12 of unsecured claims and \$460,000 of secured claims. On October 28, 2010, the bankruptcy ("2010 Bankruptcy") was discharged.

9. In 2012, Fowler formed WCI for the purpose of investing in real estate. WCI's main business objective was "to identify, purchase, improve, and sell real estate for a profit." WCI invested in "residential remodels, newly built structures ... and raw land with the intent of building new single-



1 family residences.” WCI generally financed “the purchase of the investment properties” through  
2 loans from “individuals and entities.”

3 10. From at least December of 2014, until at least March of 2017, Respondents offered  
4 and sold securities in the form of investment contracts and/or promissory notes (“Notes”) within or  
5 from Arizona to at least eight investors (collectively, “Investors”), of which at least seven of the  
6 Investors were Arizona residents. The Investors collectively invested approximately \$1,987,582.  
7 Respondents represented they were raising capital to fund “fix and flip real estate transaction(s)”  
8 and/or to fund a “new build real estate transaction,” in Arizona.

9 **2014 Never Mind Trail Investment**

10 11. On or about December of 2014, Fowler contacted at least two Investors and offered  
11 both an opportunity to invest in a specified parcel of raw land (“Never Mind Trail”) located in  
12 Carefree, Arizona. Fowler offered both Investors 12% interest plus return of principal. Fowler  
13 represented to both Investors that their investment funds would be used to purchase the Never Mind  
14 Trail property and build two custom homes on the property. Fowler further represented that each  
15 residence (once built) would be sold for a profit. Based on Fowler’s representations, both Investors  
16 decided to invest in the Never Mind Trail investment (“2014 Never Mind Trail Investment”).

17 12. From December 4, 2014, through December 11, 2014, both Investors collectively  
18 invested approximately \$409,882 for a promised 12% return on investment and return of their  
19 principal investments. One Investor rolled over approximately \$52,082 from his returns on a previous  
20 investment with the Respondents, and both Investors wired their investment funds to WCI’s business  
21 account held with the Arizona Federal Credit Union, to fund the investments. During the relevant  
22 time-period, Fowler was the sole signer of WCI’s business account. Shortly thereafter, Fowler  
23 informed both Investors that he needed to raise more capital and was going to bring in more Investors  
24 to fund the 2014 Never Mind Trail Investment.

25 13. On or about December 23, 2014, Respondents raised \$331,700 in additional  
26 investment capital from two other Investors for the 2014 Never Mind Trail Investment. The new

1 Investors were given escrow instructions to wire their funds to a title company, based in Arizona, for  
2 the 2014 Never Mind Trail Investment.

3 14. On December 23, 2014, Fowler as the "Owner" of WCI, executed an investment  
4 contract and/or Note (hereinafter, "2014 Note"), which listed WCI as the "Borrower," and the four  
5 Investors ("2014 Never Mind Trail Investors") as the "Lender." The 2014 Never Mind Trail  
6 Investors' only role in the 2014 Never Mind Trail Investment was to provide capital. The success of  
7 the investment depended solely on the Respondents' efforts to purchase the Never Mind Trail  
8 property, build two single-family residences, and sell each residence for a profit.

9 15. The 2014 Note contained the following same or similar relevant language:

- 10 • The Borrower (WCI) promised to pay Lender the principal amount of all advances  
11 made by Lender to Borrower hereunder, not to exceed \$741,582.20;
- 12 • This Note was set up to be paid in deferred payments. All principal and interest  
13 payments would be due upon sale of the described property. "On or before December  
14 29th, 2014," Borrower would pay deferred payments of interest calculated at 12% on  
15 the full loan amount of \$741,582.20;
- 16 • The entire unpaid balance of all advances plus interest was immediately due and  
17 payable to the Lender within **TWELVE MONTHS (12). The maturity date was**  
18 **December 29, 2015** [emphasis is original];"
- 19 • The Lender was funding a fix and flip real estate transaction;
- 20 • The loan was to be in first (1<sup>st</sup>) position;
- 21 • In the event the Lender received any installment on or after the 5<sup>th</sup> day of the month  
22 after the initial 12-month period, then the Borrower would pay in addition a late  
23 charge in the amount of \$25.00 per day;
- 24 • Borrower would be in default if: Borrower failed to make any payment within five  
25 days of the date due; Borrower broke any promise he made to Lender; or Borrower  
26



1 failed to comply with or perform when due any other term, obligation, covenant, or  
2 conditioned contained in this Note or any agreement related to this Note;

- 3 • “Upon default, Lender may, after giving such notice as required by applicable law,  
4 declare the entire unpaid principal balance on this Note and all accrued unpaid interest  
5 immediately due,” and then Borrower would pay that amount; and  
6 • Borrower agreed to the terms of the Note.

7 16. On December 29, 2014, Respondents recorded a deed of trust in connection to the  
8 2014 Note, with the Maricopa County Recorder’s Office.

9 17. On or about December 29, 2014, WCI purchased the Never Mind Trail property for  
10 \$390,000 and paid an additional \$11,686.43 in settlement charges, taxes, and fees (total of  
11 \$401,686.43).

12 18. Respondents raised \$741,582.20 in investment capital from the 2014 Never Mind  
13 Trail Investors and purchased the Never Mind Trail property for a total of \$401,686.43, leaving a  
14 remainder of \$339,895.77 of the 2014 Never Mind Trail Investors’ funds left to go towards  
15 construction-related costs for building two single-family homes on the Never Mind Trail property.

16 19. However, Respondents used a portion of some of the 2014 Never Mind Trail  
17 Investors’ funds on the Respondents’ other fix and flip properties that were unrelated to the 2014  
18 Never Mind Trail Investment, and on personal expenses, which was contrary to the Respondents’  
19 representation to some of the 2014 Never Mind Trail Investors that their investment funds would be  
20 used to purchase the Never Mind Trail property and build two single-family residences on the  
21 property.

22 20. On December 29, 2015, the 2014 Note matured. During the relevant time-period,  
23 Respondents failed to pay any of the 2014 Never Mind Trail Investors their promised 12% interest.

24 ...

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1 **2016 Dove Valley Investment**

2 21. In October of 2011, Fowler and Respondent Spouse purchased a residential property  
3 ("Dove Valley") located in Cave Creek, Arizona. During the relevant time-period, the Dove Valley  
4 property was Fowler's and Respondent Spouse's personal residence.

5 22. In 2016, Fowler contacted an Investor and represented that she should invest her entire  
6 retirement funds (\$279,000) into a fix and flip investment, identified as the Dove Valley property.  
7 Fowler represented to the Investor that she would get "12% interest paid back to her monthly for one  
8 year and then the original investment would be paid back." Fowler contacted another Investor (who  
9 had previously invested in other fix and flips with the Respondents) and offered him an opportunity  
10 to invest in the fix and flip of the Dove Valley property, for a promised 12% return on investment,  
11 and return of his principal investment. Fowler represented to both Investors that their funds would  
12 be used to fix and flip the Dove Valley property.

13 23. However, Fowler failed to disclose to the Investors that the Dove Valley property was  
14 Fowler and Respondent Spouse's personal residence.

15 24. Based on Fowler's representations, both Investors ("Dove Valley Investors") decided  
16 to invest in the Dove Valley property. Between April of 2016, and November of 2016, the Dove  
17 Valley Investors collectively invested \$414,000 for a promised 12% return on investment ("Dove  
18 Valley Investment"). Both Dove Valley Investors' investment funds were deposited into WCI's  
19 business account and/or another business account, in which Fowler was the sole signer.

20 25. On November 3, 2016, Fowler as the "Owner" of WCI, executed an investment  
21 contract and/or Note (hereinafter, "Dove Valley Note"), which listed WCI as the "Borrower," and  
22 the Dove Valley Investors as the "Lender." The Dove Valley Investors' only role in the Dove Valley  
23 Investment was to provide capital. The success of the investment depended solely on the  
24 Respondents' efforts to fix and flip the Dove Valley property for a profit.

25 ...

26 ...

1       26.   The Dove Valley Note contained the following same or similar relevant language:

- 2           • The Borrower (WCI) promised to pay Lender the principal amount of all advances
- 3           made by Lender to Borrower hereunder, not to exceed \$414,000;
- 4           • This Note was set up to be paid in deferred payments. All principal and interest
- 5           payments would be due upon sale of the described property. "On or before November
- 6           3<sup>rd</sup>, 2016," Borrower would pay deferred payments of interest calculated at 12% on
- 7           the full loan amount of \$414,000;
- 8           • The entire unpaid balance of all advances plus interest was immediately due and
- 9           payable to the Lender within **TWELVE MONTHS (12). The maturity date was**
- 10          **November 3, 2017** [emphasis is original];
- 11          • The Lender was funding a fix and flip real estate transaction;
- 12          • The loan was to be in second (2<sup>nd</sup>) position;
- 13          • In the event the Lender received any installment on or after the 5<sup>th</sup> day of the month
- 14          after the initial 12-month period, then the Borrower would pay in addition a late
- 15          charge in the amount of \$25.00 per day;
- 16          • Borrower would be in default if: Borrower failed to make any payment within five
- 17          days of the date due; Borrower broke any promise he made to Lender; or Borrower
- 18          failed to comply with or perform when due any other term, obligation, covenant, or
- 19          conditioned contained in this Note or any agreement related to this Note;
- 20          • "Upon default, Lender may, after giving such notice as required by applicable law,
- 21          declare the entire unpaid principal balance on this Note and all accrued unpaid interest
- 22          immediately due," and then Borrower would pay that amount;
- 23          • Borrower agreed to the terms of the Note.

24       27.   On May 25, 2017, Respondents recorded a deed of trust in connection to the Dove

25   Valley Note, with the Maricopa County Recorder's Office.

26



1        28.    On November 3, 2017, the Dove Valley Note matured. The Dove Valley Investors  
2 collectively invested \$414,000 and have only received back approximately \$44,366.

3        29.    Respondents used a portion of the Dove Valley Investors' funds on the Respondents'  
4 other fix and flip properties that were unrelated to the Dove Valley Investment and withdrew funds  
5 for purposes unrelated to the Dove Valley Investment, which was contrary to Fowler's representation  
6 to the Dove Valley Investors that their investment funds would be used to fix and flip the Dove Valley  
7 property.

8        **2017 Never Mind Trail Investment**

9        30.    From at least December of 2016, through at least March of 2017, Respondents offered  
10 additional investment opportunities in the Never Mind Trail property ("2017 Never Mind Trail  
11 Investment") to at least six Investors, of which three of the Investors had previously invested in the  
12 2014 Never Mind Trail Investment. Fowler represented to at least five of the Investors that he was  
13 raising investment capital to fund the construction costs to build two single-family homes on the  
14 Never Mind Trail property, and he promised a 12% return of investment, and return of principal  
15 investments. Fowler further represented to at least five of the Investors that their investment funds  
16 would be used for costs related to building two single-family homes on the Never Mind Trail  
17 property.

18        31.    In December of 2016, Fowler contacted an Investor (who had previously invested in  
19 other fix and flips investments with the Respondents) and Fowler represented that he owned the  
20 Never Mind Trail property and was raising investment capital to build two single-family homes on  
21 the property. However, Respondents failed to disclose: that the 2014 Never Mind Trail Investors'  
22 funds were used to purchase the property; the 2014 Never Mind Trail Investors still held a deed of  
23 trust on the property; and the 2014 Never Mind Trail Investors did not receive any returns and/or  
24 only received partial returns on their investments and did not receive their principal investments back.

25        32.    Based on Fowler's representations, the above-mentioned Investor decided to invest  
26 \$60,000. A couple of months later, Fowler contacted the Investor and represented he needed "more



1 money to keep the Never Mind project on track.” The Investor agreed to invest an additional  
2 \$100,000.

3 33. In December of 2016, Fowler offered another Investor an opportunity to invest in the  
4 Never Mind Trail property. Fowler represented to the Investor that the Never Mind Trail Property  
5 was already paid in full, and that he was building two houses on the property that would be valued at  
6 \$1.5 million each. Fowler further represented that “there were no risks at all and guaranteed ... 12%  
7 annually.” Contrary to those statements, Respondents failed to disclose to the Investor that the 2014  
8 Never Mind Trail Investors still held a deed of trust on the property, and the 2014 Never Mind Trail  
9 Investors did not receive any returns and/or only received partial returns on their investments and did  
10 not receive their principal investments back.

11 34. Fowler presented himself as very successful to above-mentioned Investor. However,  
12 Fowler failed to disclose his 2010 Bankruptcy to the Investor. Based on Fowler’s representations, the  
13 Investors decided to invest \$188,000. A few months later, the Investor invested an additional  
14 \$203,000.

15 35. In January of 2017, Fowler contacted at least two of the 2014 Never Mind Trail  
16 Investors and represented that he needed more money to start construction on the Never Mind Trail  
17 property. At least one of the Investors informed Fowler that they did not have additional funds to  
18 invest in the project. Fowler represented to both Investors that he was going to bring in more Investors  
19 and pool all the investment funds together to build the residences.

20 36. Between January 11, 2017, and January 13, 2017, all four of the 2014 Never Mind  
21 Trail Investors recorded a deed of release and full reconveyance with the Maricopa County  
22 Recorder’s Office. Three of the 2014 Never Mind Trail Investors rolled over investment funds from  
23 their 2014 Never Mind Trail Investments and/or invested additional funds into the 2017 Never Mind  
24 Trail Investment. Months later, the remaining 2014 Never Mind Trail Investor received her promised  
25 return on investment, including her principal investment back.  
26

1           37. On or about January 19, 2017, Fowler contacted another Investor (who had previously  
2 invested in other fix and flips investments with the Respondents) and represented that he owned the  
3 Never Mind Trail property, and he needed money to build two custom homes on the property and  
4 sell each for a profit. However, Respondents failed to disclose to the Investor that the 2014 Never  
5 Mind Trail Investors did not receive any returns and/or only received partial returns on their  
6 investments and did not receive their principal investments back. Based on Fowler's representations,  
7 the Investors invested \$150,000.

8           38. In total, six Investors ("2017 Never Mind Trail Investors") collectively invested  
9 \$1,279,882.19 in the 2017 Never Mind Trail Investment. The 2017 Never Mind Trail Investors' funds  
10 were deposited into WCI's business and/or their funds were rolled over from the 2014 Never Mind  
11 Trail Investment.

12           39. On March 21, 2017, Fowler as the "Owner" of WCI, executed an investment contract  
13 and/or Note (hereinafter, "2017 Note"), which listed WCI as the "Borrower," and the six 2017 Never  
14 Mind Trail Investors as the "Lender." The 2017 Never Mind Trail Investors' only role in the 2017  
15 Never Mind Trail Investment was to provide capital. The success of the investment depended solely  
16 on the Respondents' efforts to build two single-family homes on the property and sell each home for  
17 a profit.

18           40. The 2017 Note contained the following same or similar relevant language:

- 19           • The Borrower (WCI) promised to pay Lender the principal amount of all advances  
20 made by Lender to Borrower hereunder, not to exceed \$1,279,882.19;
- 21           • This Note was set up to be paid in deferred payments. All principal and interest  
22 payments would be due upon sale of the described property. "On or before December  
23 1<sup>st</sup>, 2018," Borrower would pay deferred payments of interest calculated at 12% on  
24 the full loan amount of \$1,279,882.19;

25 ...

26 ...



- The entire unpaid balance of all advances plus interest was immediately due and payable to the Lender within **TWENTY-FOUR MONTHS (24). The maturity date was December 1, 2018** [emphasis is original];
- The Lender was funding a new build real estate transaction;
- The loan was to be in first (1<sup>st</sup>) position;
- In the event the Lender received any installment on or after the 5<sup>th</sup> day of the month after the initial 12-month period, then the Borrower would pay in addition a late charge in the amount of \$25.00 per day;
- Borrower would be in default if: Borrower failed to make any payment within five days of the date due; Borrower broke any promise he made to Lender; or Borrower failed to comply with or perform when due any other term, obligation, covenant, or conditioned contained in this Note or any agreement related to this Note;
- “Upon default, Lender may, after giving such notice as required by applicable law, declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due,” and then Borrower would pay that amount;

41. Borrower agreed to the terms of the Note.

42. On March 24, 2017, Fowler used a portion of the 2017 Never Mind Trail Investors’ investment funds and wired \$334,443.85, which included a \$70,743.85 interest payment, from WCI’s business account to a 2014 Never Mind Trail Investor [who did not invest in the 2017 Never Mind Trail Investment], which was contrary to Fowler’s representation that the 2017 Never Mind Trail Investors’ funds would be used to build two homes on the Never Mind Trail property.

43. On May 24, 2017, a deed of trust in connection to the 2017 Note was recorded with the Maricopa County Recorder’s Office.

44. In January of 2018, Fowler contacted several of the 2017 Never Mind Trail Investors and represented that their investment funds were “gone” and he “made bad choices ... and didn’t

1 have enough money to build on the property [even though the land was still raw, and no construction  
2 had taken place].”

3 45. On December 1, 2018, the 2017 Note matured. Since then, none of the 2017 Never  
4 Mind Trail Investors have received their promised 12% interest or their principal investments back.

5 46. Respondents used a portion of the 2017 Never Mind Trail Investors’ funds on the  
6 Respondents’ other fix and flip properties that were unrelated to the 2017 Never Mind Trail  
7 Investment, on personal expenses, and to pay a 2014 Never Mind Trail Investor [who did not invest  
8 in the 2017 Never Mind Trail Investment], which was contrary to Fowler’s representation to some  
9 of the 2017 Never Mind Trail Investors that their investment funds would be used to build two single-  
10 family homes on the Never Mind Trail property.

11 47. The 2014 Never Mind Trail Investors, the Dove Valley Investors, and the 2017 Never  
12 Mind Trail Investors collectively invested approximately \$1,987,582 and have only received back  
13 approximately \$338,066. The remaining principal owed is approximately \$1,649,516.

14 **IV.**

15 **VIOLATION OF A.R.S. § 44-1841**

16 **(Offer or Sale of Unregistered Securities)**

17 48. From at least December of 2014, until at least March of 2017, Respondents offered or  
18 sold securities in the form of investment contracts and/or Notes, within or from Arizona.

19 49. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
20 Securities Act.

21 50. This conduct violates A.R.S. § 44-1841.

22 **V.**

23 **VIOLATION OF A.R.S. § 44-1842**

24 **(Transactions by Unregistered Dealers or Salesmen)**

25 51. Respondents offered or sold securities within or from Arizona while not registered as  
26 dealers or salesmen pursuant to Article 9 of the Securities Act.



52. This conduct violates A.R.S. § 44-1842.

## VI.

## VIOLETION OF A.R.S. § 44-1991

**(Fraud in Connection with the Offer or Sale of Securities)**

53. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents misrepresented to some of the 2014 Never Mind Trail Investors that their funds would be used to purchase the Never Mind Trail property and build two single-family homes on the property; when in fact, Respondents used a portion of the funds on the Respondents' other fix and flip properties that were unrelated to the 2014 Never Mind Trail Investment, and on personal expenses;

b) Respondents misrepresented to the Dove Valley Investors that their investment funds would be used to fix and flip the Dove Valley property, when in fact, Respondents used a portion of the funds on the Respondents' other fix and flip properties that were unrelated to the Dove Valley Investment, and withdrew funds for a purpose unrelated to the Dove Valley Investment;

c) In December of 2016, Fowler misrepresented to at least one of the 2017 Never Mind Trail Investors by stating that “there were no risks at all” with the 2017 Never Mind Trail Investment, and “guaranteed ... 12% annually,” if she invested in the 2017 Never Mind Trail Investment, when in fact, during that relevant time-period, the 2014 Never Mind Trail Investors did not receive any return and/or received partial returns on their investments and did not receive their principal investments back;

1           d)     Respondents misrepresented to some of the 2017 Never Mind Trail Investors  
2 that their investment funds would be used to build two single-family homes on the Never Mind Trail  
3 property, when in fact, Respondents used a portion of the funds on the Respondents' other fix and  
4 flip properties unrelated to the Never Mind Trail property, on personal expenses, and to pay off a  
5 2014 Never Mind Trail Investor [who did not invest in the 2017 Never Mind Trail Investment];

6           e)     During the relevant time-period, Respondents failed to disclose to the Dove  
7 Valley Investors that the Dove Valley property was Fowler's personal residence;

8           f)     During the relevant time-period, Respondents represented to some of the 2017  
9 Never Mind Trail Investors that the Respondents were raising investment capital to build homes on the  
10 Never Mind Trail property to later sell for a profit. However, Respondents failed to disclose to them  
11 that the 2014 Never Mind Trail Investors did not receive any returns and/or only received partial  
12 returns on their investments and did not receive their principal investments back; and

13           g)     Fowler informed at least one of the 2017 Never Mind Trail Investors that he  
14 was very successful. However, Fowler failed to disclose his 2010 Bankruptcy to the Investor.

15         54.     This conduct violates A.R.S. § 44-1991.

16         55.     Respondent Fowler directly or indirectly controlled Respondent WCI within the  
17 meaning of A.R.S. § 44-1999(B). Therefore, Respondent Fowler is jointly and severally liable under  
18 A.R.S. § 44-1999 to the same extent as Respondent WCI for any violations of A.R.S. § 44-1991.

## 19                                 **VII.**

### 20                                 **REQUESTED RELIEF**

21         The Division requests that the Commission grant the following relief:

22           1.     Order Respondents to permanently cease and desist from violating the Securities Act,  
23 pursuant to A.R.S. § 44-2032;

24           2.     Order Respondents to take affirmative action to correct the conditions resulting from  
25 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
26 A.R.S. § 44-2032;



3. Order Respondents WCI and Fowler to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital communities of Respondent Fowler and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

## VIII.

## HEARING OPPORTUNITY

Each Respondent [including Respondent Spouse] may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail [kcannon@azcc.gov](mailto:kcannon@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation. Additional information

about the administrative action procedure may be found at  
<http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

**IX.**

**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Michael Shaw.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering Respondent or Respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 20<sup>th</sup> day of May 2019.

  
Wendy Coy  
Assistant Director of Securities - Enforcement